

Department of Homeland Security

§ 274a.1

the petitioner with the superior property interest has been finally adjudicated nor until any claim or petition of the owner has been finally adjudicated.

(d) The determination on a petition shall set forth either the conditions upon which relief has been granted and the procedures for obtaining possession of the forfeited conveyance or other relief granted; or the reasons for denial of relief from forfeiture and the procedures for requesting reconsideration. The determination on a petition shall be mailed to the petitioner or duly authorized counsel of the petitioner.

(e) Any request for reconsideration of a denial of relief from forfeiture must be submitted to the regional commissioner within 10 days of receipt of the determination on the petition. Such request for reconsideration can only be based on evidence recently developed or not previously considered.

(f) Only one request for reconsideration of a denial of relief from forfeiture shall be considered.

§ 274.20 Compromise of judicial forfeiture proceedings.

Judicial forfeiture proceedings commenced pursuant to section 274(b) of the Act and this part may be compromised by the United States Attorney only with the concurrence of the Director, Asset Forfeiture Office, Criminal Division, Department of Justice. In evaluating a compromise, the United States Attorney shall consider the probabilities for successfully prosecuting the judicial forfeiture proceedings and the terms of the compromise offer. The United States Attorney shall consult with the regional commissioner before recommending a compromise.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

Subpart A—Employer Requirements

Sec.

274a.1 Definitions.

274a.2 Verification of employment eligibility.

274a.3 Continuing employment of unauthorized aliens.

274a.4 Good faith defense.

274a.5 Use of labor through contract.

274a.6 State employment agencies.

274a.7 Pre-enactment provisions for employees hired prior to November 7, 1986.

274a.8 Prohibition of indemnity bonds.

274a.9 Enforcement procedures.

274a.10 Penalties.

274a.11 [Reserved]

Subpart B—Employment Authorization

274a.12 Classes of aliens authorized to accept employment.

274a.13 Application for employment authorization.

274a.14 Termination of employment authorization.

AUTHORITY: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

SOURCE: 52 FR 16221, May 1, 1987, unless otherwise noted.

Subpart A—Employer Requirements

§ 274a.1 Definitions.

For the purpose of this part—

(a) The term *unauthorized alien* means, with respect to employment of an alien at a particular time, that the alien is not at that time either: (1) Lawfully admitted for permanent residence, or (2) authorized to be so employed by this Act or by the Attorney General;

(b) The term *entity* means any legal entity, including but not limited to, a corporation, partnership, joint venture, governmental body, agency, proprietorship, or association;

(c) The term *hire* means the actual commencement of employment of an employee for wages or other remuneration. For purposes of section 274A(a)(4) of the Act and § 274a.5 of this part, a hire occurs when a person or entity uses a contract, subcontract or exchange entered into, renegotiated or extended after November 6, 1986, to obtain the labor of an alien in the United States, knowing that the alien is an unauthorized alien;

(d) The term *refer for a fee* means the act of sending or directing a person or transmitting documentation or information to another, directly or indirectly, with the intent of obtaining employment in the United States for such person, for remuneration whether on a retainer or contingency basis; however, this term does not include union hiring

halls that refer union members or non-union individuals who pay union membership dues;

(e) The term *recruit for a fee* means the act of soliciting a person, directly or indirectly, and referring that person to another with the intent of obtaining employment for that person, for remuneration whether on a retainer or contingency basis; however, this term does not include union hiring halls that refer union members or non-union individuals who pay union membership dues;

(f) The term *employee* means an individual who provides services or labor for an employer for wages or other remuneration but does not mean independent contractors as defined in paragraph (j) of this section or those engaged in casual domestic employment as stated in paragraph (h) of this section;

(g) The term *employer* means a person or entity, including an agent or anyone acting directly or indirectly in the interest thereof, who engages the services or labor of an employee to be performed in the United States for wages or other remuneration. In the case of an independent contractor or contract labor or services, the term *employer* shall mean the independent contractor or contractor and not the person or entity using the contract labor;

(h) The term *employment* means any service or labor performed by an employee for an employer within the United States, including service or labor performed on a vessel or aircraft that has arrived in the United States and has been inspected, or otherwise included within the provisions of the Anti-Reflagging Act codified at 46 U.S.C. 8704, but not including duties performed by nonimmigrant crewmen defined in sections 101 (a)(10) and (a)(15)(D) of the Act. However, employment does not include casual employment by individuals who provide domestic service in a private home that is sporadic, irregular or intermittent;

(i) The term *State employment agency* means any State government unit designated to cooperate with the United States Employment Service in the operation of the public employment service system;

(j) The term *independent contractor* includes individuals or entities who carry on independent business, contract to do a piece of work according to their own means and methods, and are subject to control only as to results. Whether an individual or entity is an independent contractor, regardless of what the individual or entity calls itself, will be determined on a case-by-case basis. Factors to be considered in that determination include, but are not limited to, whether the individual or entity: supplies the tools or materials; makes services available to the general public; works for a number of clients at the same time; has an opportunity for profit or loss as a result of labor or services provided; invests in the facilities for work; directs the order or sequence in which the work is to be done and determines the hours during which the work is to be done. The use of labor or services of an independent contractor are subject to the restrictions in section 274A(a)(4) of the Act and §274a.5 of this part;

(k) The term *pattern or practice* means regular, repeated, and intentional activities, but does not include isolated, sporadic, or accidental acts;

(l)(1) The term *knowing* includes having actual or constructive knowledge. Constructive knowledge is knowledge that may fairly be inferred through notice of certain facts and circumstances that would lead a person, through the exercise of reasonable care, to know about a certain condition. Examples of situations where the employer may, depending on the totality of relevant circumstances, have constructive knowledge that an employee is an unauthorized alien include, but are not limited to, situations where the employer:

(i) Fails to complete or improperly completes the Employment Eligibility Verification, Form I-9;

(ii) Acts with reckless and wanton disregard for the legal consequences of permitting another individual to introduce an unauthorized alien into its work force or to act on its behalf; and

(iii) Fails to take reasonable steps after receiving information indicating that the employee may be an alien who is not employment authorized, such as—

Department of Homeland Security

§ 274a.1

(A) An employee's request that the employer file a labor certification or employment-based visa petition on behalf of the employee;

(B) Written notice to the employer from the Social Security Administration reporting earnings on a Form W-2 that employees' names and corresponding social security account numbers fail to match Social Security Administration records; or

(C) Written notice to the employer from the Department of Homeland Security that the immigration status document or employment authorization document presented or referenced by the employee in completing Form I-9 is assigned to another person, or that there is no agency record that the document has been assigned to any person.

(2)(i) An employer who receives written notice from the Social Security Administration as described in paragraph (l)(1)(iii)(B) of this section will be considered by the Department of Homeland Security to have taken reasonable steps—and receipt of the written notice will therefore not be used as evidence of constructive knowledge—if the employer takes the following actions:

(A) The employer must check its records to determine whether the discrepancy results from a typographical, transcription, or similar clerical error. If the employer determines that the discrepancy is due to such an error, the employer must correct the error and inform the Social Security Administration of the correct information (in accordance with the written notice's instructions, if any). The employer must also verify with the Social Security Administration that the employee's name and social security account number, as corrected, match Social Security Administration records. The employer should make a record of the manner, date, and time of such verification, and then store such record with the employee's Form I-9(s) in accordance with 8 CFR 274a.2(b). The employer may update the employee's Form I-9 or complete a new Form I-9 (and retain the original Form I-9), but the employer should not perform a new Form I-9 verification. The employer must complete these steps within thirty days of receiving the written notice.

(B) If the employer determines that the discrepancy is not due to an error in its own records, the employer must promptly request that the employee confirm that the name and social security account number in the employer's records are correct. If the employee states that the employer's records are incorrect, the employer must correct, inform, verify, and make a record as set forth in paragraph (l)(2)(i)(A) of this section. If the employee confirms that its records are correct, the employer must promptly request that the employee resolve the discrepancy with the Social Security Administration (in accordance with the written notice's instructions, if any). The employer must advise the employee of the date that the employer received the written notice from the Social Security Administration and advise the employee to resolve the discrepancy with the Social Security Administration within ninety days of the date the employer received the written notice from the Social Security Administration.

(C) If the employer is unable to verify with the Social Security Administration within ninety days of receiving the written notice that the employee's name and social security account number matches the Social Security Administration's records, the employer must again verify the employee's employment authorization and identity within an additional three days by following the verification procedure specified in paragraph (l)(2)(iii) of this section.

(ii) An employer who receives written notice from the Department of Homeland Security as described in paragraph (l)(1)(iii)(C) of this section will be considered by the Department of Homeland Security to have taken reasonable steps—and receipt of the written notice will therefore not be used as evidence of constructive knowledge—if the employer takes the following actions:

(A) The employer must contact the local Department of Homeland Security office (in accordance with the written notice's instructions, if any) and attempt to resolve the question raised by the Department of Homeland Security about the immigration status document or employment authorization document. The employer must

§ 274a.2

8 CFR Ch. I (1–1–08 Edition)

complete this step within thirty days of receiving the written notice.

(B) If the employer is unable to verify with the Department of Homeland Security within ninety days of receiving the written notice that the immigration status document or employment authorization document is assigned to the employee, the employer must again verify the employee's employment authorization and identity within an additional 3 days by following the verification procedure specified in paragraph (l)(2)(iii) of this section.

(iii) The verification procedure referenced in paragraphs (l)(2)(i)(B) and (l)(2)(ii)(B) of this section is as follows:

(A) The employer completes a new Form I-9 for the employee, using the same procedures as if the employee were newly hired, as described in section 274a.2(a) and (b) of this part, except that—

(1) The employee must complete Section 1 ("Employee Information and Verification") and the employer must complete Section 2 ("Employer Review and Verification") of the new Form I-9 within ninety-three days of the employer's receipt of the written notice referred to in paragraph (l)(1)(iii)(B) or (C) of this section;

(2) The employer must not accept any document referenced in any written notice described in paragraph (l)(1)(iii)(C) of this section, any document that contains a disputed social security account number or alien number referenced in any written notice described in paragraphs (l)(1)(iii)(B) or (l)(1)(iii)(C) of this section, or any receipt for an application for a replacement of such document, to establish employment authorization or identity or both; and

(3) The employee must present a document that contains a photograph in order to establish identity or both identity and employment authorization.

(B) The employer must retain the new Form I-9 with the prior Form(s) I-9 in accordance with 8 CFR 274a.2(b).

(3) Knowledge that an employee is unauthorized may not be inferred from an employee's foreign appearance or accent. Nothing in this definition should be interpreted as permitting an

employer to request more or different documents than are required under section 274A(b) of the Act or to refuse to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual, except a document about which the employer has received written notice described in paragraph (l)(1)(iii) of this section and with respect to which the employer has received no verification as described in paragraphs (l)(2)(i)(C) or (l)(2)(ii)(B) of this section.

[52 FR 16221, May 1, 1987, as amended at 53 FR 8612, Mar. 16, 1988; 55 FR 25931, June 25, 1990; 56 FR 41783, Aug. 23, 1991; 72 FR 45623, Aug. 15, 2007]

§ 274a.2 Verification of employment eligibility.

(a) *General.* This section establishes requirements and procedures for compliance by persons or entities when hiring, or when recruiting or referring for a fee, or when continuing to employ individuals in the United States.

(1) *Recruiters and referrers for a fee.* For purposes of complying with section 274A(b) of the Act and this section, all references to recruiters and referrers for a fee are limited to a person or entity who is either an agricultural association, agricultural employer, or farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act, Pub. L. 97-470 (29 U.S.C. 1802)).

(2) *Verification form.* Form I-9, Employment Eligibility Verification Form, is used in complying with the requirements of this 8 CFR 274a.1–274a.11. Form I-9 can be in paper or electronic format. In paper format, the Form I-9 may be obtained in limited quantities at USCIS district offices, or ordered from the Superintendent of Documents, Washington, DC 20402. In electronic format, a fillable electronic Form I-9 may be downloaded from <http://www.uscis.gov>. Alternatively, Form I-9 can be electronically generated or retained, provided that the resulting form is legible; there is no change to the name, content, or sequence of the data elements and instructions; no additional data elements or language are inserted; and the standards specified under 8 CFR